Sivakumar a/l Varatharaju Naidu v Ganesan a/l Retanam

A

COURT OF APPEAL (PUTRAJAYA) — CIVIL SUIT NO A-02–2378 OF 2009

B

ABDUL MALIK ISHAK, KN SEGARA AND ABDUL WAHAB PATAIL JJCA

20 AUGUST 2010

C

Civil Procedure — Pleadings — Material facts to be pleaded — Plaintiff applied for injunction to prevent defendant or defendant's agents from assaulting him — Whether fact pleaded — Whether courts bound by pleadings — Whether omission in statement of claim can be made good by affidavit evidence

D

Civil Procedure — Pleadings — Striking out — Principles — Whether plaintiff's prayer for injunctions plainly and obviously unsustainable — Suit commenced by plaintiff as Speaker of State Assembly — Whether plaintiff's capacity as Speaker existed at time of filing of action — Whether proceedings in Assembly justiciable — Whether allegations made in suit scandalous — Whether suit amounted to abuse of process — Rules of the High Court 1980 O 18 r 19

E

Constitutional Law — Legislature — State Assembly — Appointment and removal of State Assembly Speaker — Whether removal of plaintiff and appointment of defendant as Perak State Assembly Speaker valid — Whether Assembly has power or jurisdiction to elect or dismiss Speaker during proceedings — Whether validity of appointment of Speaker within court's jurisdiction — Federal Constitution art 72(1)

F

G

Constitutional Law — Legislature — State Assembly — Speaker — Immunity — Whether acts of speaker during sitting of Assembly privileged and covered with immunity

H

What transpired on 7 May 2009 during the sitting of the Dewan Undangan Negeri Perak — the Perak State Legislative Assembly ('the Assembly'), took centre stage in this appeal. The plaintiff claimed that he was the Tronoh State Assemblyman and the Speaker of the Assembly. On 7 May 2009, as the plaintiff was presiding over a sitting of the Assembly, it was claimed that the defendant's servants and/or agents assaulted the plaintiff by seizing him with violence, dragging him from his seat and forcibly ejecting him from the Assembly. According to the plaintiff, the defendant later unlawfully held himself out as the Speaker by occupying the Speaker's seat and donning the

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Speaker's attire. The plaintiff was said to have been wrongfully kept in custody and/or imprisoned by the defendant's servants or agents in a room in the Assembly building for more than an hour before he was permitted to leave. As a reason thereof, the plaintiff claimed to have had suffered shock, pain and injury, loss and damage. The plaintiff also claimed to have suffered mental distress, great humiliation and embarrassment in public. The plaintiff therefore sought damages and an injunction to prevent the defendant from denying the plaintiff entry to the Assembly and from carrying out his duties as the lawful Speaker of the Assembly. It was contended that the defendant was at all material times not an elected member of the Assembly and therefore his presence at any Assembly sitting was unlawful and constituted a contempt of the Assembly. According to the defendant, during the sitting of the Assembly on 7 May 2009, the Assembly duly resolved to remove the plaintiff as Speaker and to elect the defendant as Speaker. Consequently, the plaintiff was no longer the Speaker of the Assembly as at 7 May 2009. The plaintiff had refused to obey the defendant's repeated orders to vacate the Speaker's chair thus prompting the defendant to act pursuant to the Standing Orders by ordering the *Bentara Dewan* to remove the plaintiff from the Speaker's chair. The defendant also claimed that the plaintiff had failed to plead material facts related to the alleged assault on the plaintiff. The plaintiff in his affidavit in reply averred that he could not identify the culprits or the agents of the defendant. The defendant applied to strike out the plaintiff's writ of summons and the statement of claim under O 18 r 19(1)(b) or (1)(d) of the Rules of the High Court 1980 ('RHC'). The learned High Court judge allowed the defendant's striking out application. The plaintiff appealed against this decision.

Held, dismissing the appeal with costs:

(1) The summary procedure under O 18 r 19 of the RHC should only be resorted to when it is conspicuously clear that the plaintiff's claim, on the face of it, is obviously unsustainable. The court will only strike out a claim in plain and obvious cases and where the claim is obviously unsustainable. The power to strike out must be exercised by the court sparingly. It is a rule of thumb that if it can be shown that the pleadings do disclose some cause of action or that it has raised some question fit to be decided, then the case should be set down for argument notwithstanding that the chances of success are minimal. The pleadings must be entirely hopeless, baseless or without foundation in law or in equity before they can be struck out (see paras 13–17).

(2) A complex case will not be summarily struck out. Here, the appeal was not complex. Article 72(1) of the Federal Constitution barred the court from questioning the validity of any proceedings in the Assembly. The Assembly has the power or jurisdiction to elect or dismiss the Speaker.

Here, the Assembly had validly elected the defendant as the Speaker to replace the plaintiff and the court had no jurisdiction to interfere (see paras 19 & 22).

(3) What is said to be a scandalous pleading must surely vary from case to case. Totally irrelevant and wholly unnecessary allegations would be termed as scandalous. What transpired in the Assembly on 7 May 2009 was of no concern to the court. It was certainly scandalous to make those allegations as contained in the statement of claim (see para 23).

(4) The court has an inherent jurisdiction to prevent an abuse of its process. Thus, when the learned High Court judge struck out the plaintiff's writ of summons and the statement of claim he was exercising his inherent jurisdiction to prevent an abuse of the court's process. The contents of the statement of claim contained particulars that were intended to embarrass the defendant and it was certainly an abuse of the process of the court when the plaintiff filed the statement of claim together with the writ of summons. The process of the court was certainly misused by the plaintiff (see para 25).

(5) Whatever the defendant did on 7 May 2009 after being elected as the Speaker was privileged. The cloak of immunity completely shrouded the defendant on 7 May 2009. The court has no power to interfere with the internal management of the Assembly (see paras 47–48).

(6) The plaintiff's stand, as reflected in his statement of claim, was that the assailants were the agents of the defendant. However, the plaintiff was unable to identify them. Hence, the plaintiff's claim was frivolous. Since the plaintiff was making an assertion, there must be a solid basis for making such an assertion. It is trite law that an omission in the pleading cannot be rectified by way of an affidavit evidence (see para 92).

[Bahasa Malaysia summary

Apa yang berlaku pada 7 Mei 2009 semasa persidangan Dewan Undangan Negeri Perak — Dewan Undangan Negeri Perak ('Dewan Undangan'), menjadi tumpuan dalam rayuan ini. Plantif mendakwa bahawa dia merupakan ahli Dewan Undangan Negeri Tronoh dan Yang diPertua DUN. Pada 7 Mei 2009, semasa plaintif sedang mempengerusikan persidangan Dewan Undangan, dia mendakwa bahawa orang-orang suruhan defendan dan/atau agen-agen telah menyerang plaintif dengan menangkapnya menggunakan kekerasan, mengheretnya daripada tempat duduknya dan secara paksa mengusirnya daripada Dewan Undangan tersebut. Menurut plaintif, defendan kemudiannya mengambil tempat dengan tidak sah sebagai Yang diPertua dengan menduduki tempat duduk dan memakai pakaian Yang diPertua. Plaintif dikatakan dengan salah berada dalam jagaan dan/atau dikurung oleh orang suruhan defendan atau agen-agen di dalam bilik di bangunan Dewan Undangan untuk lebih daripada satu jam sebelum dia dibenarkan untuk pergi.

A Disebabkan itu, plaintif mendakwa telah mengalami keadaan terkejut, kesakitan dan kecederaan, kerugian dan kerosakan. Plaintif juga mendakwa mengalami penderitaan mental, penghinaan yang dahsyat dan dimalukan di tempat awam. Plaintif oleh itu memohon untuk ganti rugi dan injunksi untuk mengelakkan defendan daripada menafikan kemasukan plaintif dalam Dewan B Undangan dan daripada menjalankan kewajipannya sebagai Yang diPertua DUN yang sah. Adalah dihujahkan bahawa defendan pada masa matan bukan ahli terpilih Dewan Undangan dan oleh itu kehadirannya pada sebarang persidangan Dewan Undangan adalah salah di sisi undang-undang dan penghinaan terhadap Dewan Undangan. Menurut defendan, semasa C persidangan Dewan Undangan pada 7 Mei 2009, Dewan Undangan telah mengambil resolusi untuk menyingkirkan plaintif sebagai Yang diPertua dan memilih defendan sebagai Yang diPertua. Akibatnya, plaintif bukan lagi Yang diPertua DUN mulai 7 Mei 2009. Plaintif enggan untuk mematuhi perintah berulang kali defendan untuk mengosongkan kerusi Yang diPertua justeru D menyebabkan defendan untuk bertindak mengikut peraturan mesyuarat yang diperintahkan oleh Bentara Dewan untuk mengalihkan plantif daripada kerusi Yang diPertua. Defendan juga mendakwa bahawa plaintif telah gagal memplid fakta-fakta yang material berkaitan dengan serangan yang didakwa terhadap plaintif. Plaintif di dalam afidavit balasannya menegaskan bahawa dia tidak E dapat mengenalpasti dalang-dalang atau agen-agen defendan. Defendan memohon untuk membatalkan writ saman dan penyataan tuntutan plaintif di bawah A 18 k 19(1)(b) atau (1)(d) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Hakim Mahkamah Tinggi yang bijaksana telah membenarkan permohonan pembatalan defendan. Plaintif membuat rayuan terhadap F keputusan ini.

Diputuskan, menolak rayuan dengan kos:

(1) Prosedur terus di bawah A 18 k 19 KMT seharusnya digunakan hanya apabila ia jelas menunjukkan bahawa tuntutan plaintif, adalah, dengan G begitu jelas tidak dapat dikekalkan. Mahkamah hanya akan membatalkan tuntutan dalam kes yang nyata dan jelas dan di mana tuntutan adalah dengan begitu jelas tidak dapat dikekalkan. Kuasa untuk pembatalan hendaklah dilaksanakan oleh mahkamah dengan H berhati-hati. Adalah menjadi peraturan yang penting sekiranya dapat ditunjukkan bahawa pliding-pliding benar mendedahkan sebarang kausa tindakan atau bahawa ia membangkitkan beberapa persoalan yang sesuai untuk diputuskan, dengan itu kes tersebut seharusnya ditetapkan untuk penghujahan tidak mengira bahawa peluang untuk menang adalah tipis. I Pliding-pliding tersebut mestilah tiada harapan atau tanpa asas atau tiada asas undang-undang atau ekuiti secara keseluruhannya sebelum mereka boleh membatalkannya (lihat perenggan 13–17).

(2) Kes yang kompleks tidak boleh dibatalkan secara ringkas. Di sini, rayuan tersebut adalah tidak kompleks. Perkara 72(1) Perlembagaan

Persekutuan menghalang mahkamah daripada mempersoalkan kesahan sebarang prosiding dalam Dewan Undangan. Dewan Undangan mempunyai kuasa atau bidang kuasa untuk memilih atau menyingkirkan Yang diPertua. Di sini, Dewan Undangan dengan sah telah memilih defendan sebagai Yang diPertua untuk menggantikan plaintif dan mahkamah tidak mempunyai bidang kuasa untuk masuk campur (lihat perenggan 19 & 22).

(3) Apa yang dikatakan sebagai pliding bersifat skandal sudah semestinya berbeza dari kes ke kes. Dakwaan yang secara keseluruhannya tidak relevan dan tidak perlu akan ditermakan sebagai bersifat skandal. Apa yang berlaku dalam Dewan Undangan pada 7 Mei 2009 tiada kaitan dengan mahkamah. Ia sememangnya bersifat penuh skandal untuk membuat dakwaan tersebut seperti yang terkandung di dalam penyataan tuntutan (lihat perenggan 23).

(4) Mahkamah mempunyai bidang kuasa sedia ada untuk mengelakkan penyalahgunaan prosesnya. Justeru, apabila hakim Mahkamah Tinggi yang bijaksana membatalkan saman writ dan penyataan tuntutan plaintif, beliau telah melaksanakan bidang kuasa sedia adanya untuk mengelakkan penyalahgunaan proses mahkamah. Isi kandungan penyataan tuntutan tersebut mengandungi butiran yang mana bertujuan untuk memalukan defendan dan ia sememangnya merupakan penyalahgunaan proses mahkamah apabila plaintif memfailkan penyataan tuntutan bersama dengan saman-saman writ. Proses mahkamah sememangnya telah disalahgunakan oleh plaintif (lihat perenggan 25).

(5) Apa sahaja yang dilakukan oleh defendan pada 7 Mei 2009 selepas dilantik sebagai Yang diPertua adalah dilindungi. Imuniti telah melindungi defendan sepenuhnya pada 7 Mei 2009. Mahkamah tidak mempunyai kuasa untuk masuk campur dengan pengurusan dalaman Dewan Undangan tersebut (lihat perenggan 47–48).

(6) Pegangan plaintif, seperti yang digambarkan di dalam penyataan tuntutannya, adalah bahawa penyerang-penyerang tersebut merupakan agen-agen defendan. Walau bagaimanapun, plaintif gagal untuk mengenalpasti mereka. Justeru, tuntutan plaintif adalah remeh. Memandangkan plaintif telah membuat penegasan, asas yang kukuh hendaklah wujud untuk membuat penegasan sebegitu. Adalah menjadi undang-undang tetap bahawa suatu ketinggalan di dalam pliding tidak boleh dibetulkan melalui afidavit keterangan (lihat perenggan 92).]

Notes

For a case on State Assembly, see 3(1) *Mallal's Digest* (4th Ed, 2010 Reissue) para 2291.

For cases on material facts, see 2(3) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 6091–6093.

For cases on striking out, see 2(3) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 6203–6324.

Cases referred to

Adib bin Mokhtar & Ors v Jason Chan Chee Khong & Anor [1999] 2 MLJ 473, HC (refd)

Ansa Teknik (M) Sdn Bhd v Cygal Sdn Bhd [1989] 2 MLJ 423, HC (refd)

Arah Cipta Sdn Bhd & Anor v Kian Kee Sawmills (M) Sdn Bhd & Ors [1997] 2 MLJ 11, CA (refd)

Attorney-General of the Duchy of Lancaster v London and North Western Railway Company [1892] 3 Ch D 274 (refd)

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corp Bhd [1993] 3 MLJ 36, SC (refd)

Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591, HL (refd)

Bradlaugh v Gossett (1884) 12 QBD 271 (refd)

Bruce v Odhams Press, Limited [1936] 1 KB 697, CA (refd)

Burhan Ating & Ors v Directors of Lands & Surveys & Ors [1992] 2 CLJ (Rep) 211, HC (refd)

Dato' Hj Shahari Hj Hassan v Hj Shamsudin Talib & Ors [1998] 3 MLJ 705; [1998] 4 CLJ 859, CA (refd)

Dato' Menteri Othman bin Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29; [1984] 1 CLJ (Rep) 98, FC (refd)

Datuk Ir Che Amran bin Mohd Yusoff v Yayasan Melaka & Ors [2003] MLJU 7, HC (refd)

Fan Yew Teng v PP [1971] 2 MLJ 271, FC (refd)

Fan Yew Teng v PP [1975] 2 MLJ 235, FC (refd)

Fan Yew Teng v Setia Usaha, Dewan Ra'ayat & Ors [1975] 2 MLJ 40 (refd)

Fan Yew Teng v Government of Malaysia [1976] 2 MLJ 262 (refd)

Hadi bin Hassan v Suria Records Sdn Bhd & Ors [2005] 3 MLJ 522, HC (refd)

Honan Plantations Sdn Bhd v Kerajaan Negeri Johor & Anor and another appeal [1998] 2 MLJ 498, CA (refd)

Jamaluddin Mohd Radzi & Ors v Sivakumar Varatharaju Naidu [2009] 3 CLJ 785, HC (refd)

Lai Yoke Ngan & Anor v Chin Teck Kwee & Anor [1997] 2 MLJ 565, FC (refd)

Mooney & Ors v Peat, Marwick, Mitchell & Co & Anor [1967] 1 MLJ 87 (refd)

Pacific Internet Ltd v Catcha.com Pte Ltd [2000] 3 SLR 26, HC (refd)

Pepper (Inspector of Taxes) v Hart [1993] 1 All ER 42; [1992] 3 WLR 1032, HL (refd)

Pet Far Eastern (M) Sdn Bhd v Tay Young Huat & Ors [1999] 5 MLJ 558, HC (refd)

Pickstone and others v Freemans plc [1988] 2 All ER 803, HL; [1989] AC 66, HL (refd)

PP v Ooi Kee Saik & Ors [1971] 2 MLJ 108 (refd)
PP v Fan Yew Teng [1975] 1 MLJ 176 (refd)
R (deceased), Re [1950] 2 All ER 117 (refd)
Raja Zainal Abidin bin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd [1993] 3 MLJ 16, SC (refd)
Roslan bin Abdullah v New Zealand Insurance Co Ltd [1981] 2 MLJ 324, FC (refd)
Saripah bte Manap & Ors v Emar Sdn Bhd (in dissolution) & Ors [1998] 1 MLJ 323, HC (refd)
Seng Huat Hang Sdn Bhd & Ors v Chee Seng & Co Sdn Bhd [1987] 1 MLJ 413 (refd)
Syed Abu Bakar Syed Hassan & Ors v Zainal Ariffin Hj Ibrahim & Ors [2005] 7 CLJ 457, HC (refd)
Tan Mooi Liang v Lim Soon Seng & Ors [1977] 2 MLJ 125, FC (refd)
Wan Sagar bin Wan Embong v Harun bin Taib & Ors [2008] 4 MLJ 473; [2009] 1 CLJ 457, FC (refd)
Wilson v First County Trust Ltd (No 2) [2001] 3 WLR 42 (refd)
YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener) [2009] 4 MLJ 24; [2009] 4 CLJ 253, FC (refd)

Legislation referred to

Evidence Act 1950 s 78
Federal Constitution art 72(1)
Laws of the Constitution of Perak Darul Ridzuan arts XXXVIA, XLIV
Legislative Assembly (Privileges) Enactment 1959 Schedule, paras 1, 3
Penal Code s 351
Rules of the High Court 1980 O 18 r 19, O 18 r 19(1)(b), (d)

Appeal from: Civil Suit No 22–118 of 2009 (High Court, Ipoh)

Chan Kok Keong (Cheong Sek Kwan with him) (Chan & Associates) for the plaintiff/appellant.
Firoz Hussein (Mohd Hafarizam bin Harun, Cheng Mai and Badrul Hishak bin Abdul Wahab with him) (Ong-Hanim & Badrul) for the defendant/respondent.

Abdul Malik Ishak JCA (delivering judgment of the court):

INTRODUCTION

[1] The parties will be referred to like what they were referred to at the High Court. Thus, Sivakumar a/l Varatharaju Naidu will be referred to as the plaintiff. While Ganesan a/l Retanam will be referred to as the defendant.

[2] On 15 May 2009, the plaintiff filed his writ of summons and his statement of claim citing the defendant as his adversary.

[3] On 21 May 2009, the plaintiff then filed his summons in chambers as seen in encl 3 for the following orders:

(a) the Defendant and/or his agents or servants be prevented from denying the Plaintiff entry to the Assembly or from prohibiting or obstructing the Plaintiff in any way whatsoever from occupying the office of or carrying out his duties as the lawful Speaker of the Perak State Assembly;

(b) the Defendant and/or his agents or servants be prohibited from carrying out any further acts of abuse, assault and/or battery on the Plaintiff;

(c) the costs of and occasioned by this application be borne by the Defendant; and

(d) such further or other consequential relief which this Honourable Court deems fit and just.

[4] On 30 June 2009, the defendant filed an application by way of a summons in chambers in encl 11 to strike out the plaintiff's writ of summons and the statement of claim under O 18 r 19(1)(b) or (1)(d) of the Rules of the High Court 1980 ('RHC'). In its original text, the striking out application was worded in this way:

atas pendengaran permohonan Defendan di bawah Aturan 18 Kaedah 19(b) atau (d) Kaedah-kaedah Mahkamah Tinggi, 1980 untuk suatu perintah bahawa:

(1) writ saman dan pernyataan tuntutan di dalam tindakan ini dibuang keseluruhannya; atau

(2) secara alternatifnya, kesemua kenyataan dalam pernyataan tuntutan yang menyentuh perjalanan dalam Negeri Perak dibatalkan;

(3) kos berbangkit dari dan bersampingan dengan permohonan ini hendaklah ditanggung oleh plaintif dan dibayar serta-merta; dan

(4) lain-lain relif yang dianggap suaimanfaat oleh Mahkamah Yang Mulia ini.

[5] In due course, the learned judge of the High Court allowed the defendant's application to strike out the plaintiff's writ of summons and the statement of claim by allowing encl 11 paras (1) and (3). The learned judge of the High Court then proceeded to strike out the plaintiff's application for an interlocutory injunction in encl 3 with costs.

[6] Aggrieved by the decision, the plaintiff filed an appeal to this court.

THE FACTS

[7] What transpired on 7 May 2009 during the sitting of the Dewan Undangan Negeri Perak — the Perak State Legislative Assembly ('Assembly'), took centre stage in this appeal.

[8] The plaintiff's statement of claim narrated the events that took place on 7 May 2009 as seen from the plaintiff's perspective and that statement of claim makes for an interesting reading material. In its original text, the plaintiff's statement of claim averred as follows:

(1) The Plaintiff is at all material times, and still is the Tronoh State Assemblyman and the Speaker of the Perak State Assembly ('the Assembly').

(2) The Defendant is at all material times not an elected member of the Assembly and therefore his presence at any Assembly sitting is unlawful and constitutes a contempt of the Assembly.

(3) On 7.5.2009, at or about 2.00 p.m., the Plaintiff was presiding over a sitting of the Assembly at the Bangunan Darul Ridzuan, Jalan Panglima Bukit Gantang, 30000 Ipoh and was lawfully occupying his seat in the Assembly hall when the Defendant's servants and/or agents assaulted the Plaintiff by seizing him with violence, dragging him from his seat and forcibly ejecting him from the Assembly.

(4) It was upon the specific instructions of the Defendant that the Defendant's servants and/or agents carried out the unlawful act of evicting the Plaintiff from his seat and the Assembly in the presence of the Defendant.

(5) During the Plaintiff's forced absence from the Assembly hall, the Defendant unlawfully held himself out as the Speaker by occupying the Speaker's seat and donning the Speaker's attire.

(6) In the meantime, the Plaintiff was wrongfully and without lawful justification kept in custody and/or imprisoned by the Defendant's servants or agents in a room in the said building for more than an hour before the Plaintiff was permitted to leave.

(7) By reason of the abovestated matters, the Plaintiff was prevented from carrying out his duties and obligations as the lawful Speaker of the Assembly and suffered shock, pain and injury, loss and damage, and was deprived of his liberty as aforesaid. The Plaintiff also suffered and endured mental distress, great humiliation and embarrassment in public.

PARTICULARS OF INJURIES, LOSS & DAMAGE

(i) Bruises at various parts of the body, at the upper arms and legs.

(ii) Soreness and discomfort all over the body.

(iii) Nervous shock and mental distress.

(iv) Wear and tear to suit and ceremonial robe.

(8) And the Plaintiff claims:

(a) Damages for assault and battery.

(b) Damages for false imprisonment.

(c) Aggravated damages.

(d) An injunction to prevent the Defendant and/or his agents or servants

from denying the Plaintiff entry to the Assembly or prohibiting or obstructing the Plaintiff in any way whatsoever from occupying the office of or carrying out his duties as the lawful Speaker of the Assembly.

(e) An injunction to prevent any further abuse, assault and/or battery by the Defendant and/or his agents or servants.

(f) Costs.

(g) Further or other relief which this Honourable Court deems just and equitable.

[9] Of significance would be the plaintiff's averments in his statement of claim that he is still the Speaker of the Assembly and that the defendant's servants and/or agents had assaulted him during the sitting of the Assembly and had falsely imprisoned him.

[10] As a result of his grievances, the plaintiff sought damages for assault and battery, false imprisonment, aggravated damages as well as a permanent injunction to prevent the defendant and/or his agents or servants from denying the plaintiff entry to the Assembly or prohibiting the plaintiff from occupying the office or carrying out his duties as the lawful Speaker of the Assembly.

[11] Before the High Court, the defendant contended as follows:

(a) on 23 April 2009, the office of the secretary to the Assembly received a motion to remove the plaintiff as Speaker of the Assembly;

(b) on 23 April 2009, the office of the secretary to the Assembly received a motion to appoint the defendant as Speaker of the Assembly;

(c) during the sitting of the Assembly on 7 May 2009, the Assembly duly resolved to remove the plaintiff as Speaker and the Assembly also resolved to elect the defendant as Speaker;

(d) consequently, the plaintiff was and is no longer the Speaker of the Assembly as at 7 May 2009;

(e) the defendant became Speaker of the Assembly on 7 May 2009 and is currently the Speaker of the Assembly;

(f) that those facts were duly confirmed by the secretary of the Assembly by way of a letter dated 15 June 2009 and that letter was worded in this way (see pp 176–177 of the appeal record (*bahagian* 'C'), *Jilid* 3/4):

PEJABAT SETIAUSAHA KERAJAAN,

PERAK DARUL RIDZUAN,

BAHAGIAN MAJLIS,

ARAS 2, BANGUNAN PERAK DARUL RIDZUAN,

JALAN PANGLIMA BUKIT GANTANG WAHAB,

30000 IPOH

Tarikh: 15 Jun 2009

Tetuan Ong-Hanim & Badrul

76B, Persiaran Greentown 1

Greentown Business Centre

30450 Ipoh

Perak Darul Ridzuan

Tuan,

MAHKAMAH TINGGI IPOH WRIT SAMAN NO: 22–118–2009

PLAINTIF: SIVAKUMAR A/L VARATHARAJU NAIDU

DEFENDAN: GANESAN A/L RETANAM

1. Surat tuan bertarikh 12 Julai 2009 dirujuk.
2. Untuk makluman tuan, usul perlucutan jawatan YB Sivakumar a/l Varatharaju Naidu sebagai Speaker Dewan Negeri Perak telah dibuat melalui usul bertulis yang telah diterima oleh Pejabat Setiausaha Dewan pada 23 April 2009 ('usul tersebut').
3. Usul tersebut juga telah dibawa secara lisan dan diluluskan melalui ketetapan Dewan Negeri yang telah bersidang pada 7 Mei 2009. Oleh itu, secara rasminya saya selaku Setiausaha Dewan memaklumkan pihak tuan bahawa YB Sivakumar a/l Varatharaju Naidu bukan lagi merupakan YDP DUN Perak. Status beliau kini adalah sebagai YB Tronoh sahaja.
4. Usul Perlantikan YB Dato' Ganesan sebagai YDP baru juga telah dibuat melalui usul bertulis yang telah diterima oleh Pejabat Setiausaha Dewan pada 23 April 2009 ('usul perlantikan YDP baru').
5. Usul perlantikan YDP baru juga telah dibawa secara lisan dan diluluskan melalui ketetapan Dewan Negeri yang telah bersidang pada 7 Mei 2009. Maka dengan ini saya selaku Setiausaha Dewan memaklumkan pihak tuan bahawa status YB Ganesan al/ Retanam kini adalah merupakan YDP DUN Perak.

Sekian, harap maklum.

Yang benar,

Sgd. *Illegible*

(ABDULLAH BIN ANTONG SABRI)

Setiausaha

Dewan Negeri

Perak Darul Ridzuan.

(g) that during the sitting of the Assembly on 7 May 2009 and after the Assembly had resolved to remove the plaintiff as Speaker of the Assembly, the defendant ordered the plaintiff to return to his Tronoh Assembly seat;

(h) but the plaintiff refused to obey the defendant's repeated orders and refused to vacate the speaker's chair;

(i) and the plaintiff's refusal prompted the defendant to act pursuant to the standing orders by ordering the *Bentara Dewan* to remove the plaintiff from the speaker's chair;

(j) there was a scuffle with the plaintiff and his agents and as a result the *Bentara Dewan* was injured;

(k) the defendant requested the police personnel to assist the *Bentara Dewan* and the plaintiff was subsequently removed from the Assembly; and

(l) that the persons who removed the plaintiff from the Assembly were not the agents and/or servants of the defendant.

DECISION OF THE HIGH COURT

[12] The learned judge of the High Court allowed the defendant's application to strike out the plaintiff's writ of summons and the statement of claim for the following reasons:

(a) that the validity of any proceedings in the Assembly shall not be questioned in any court (art 72 of the Federal Constitution) and, consequently, the court cannot interfere with the decision of the Assembly on 7 May 2009 which decision included the resolution to remove the plaintiff as Speaker of the Assembly and to elect the defendant as Speaker of the Assembly and, that being the case, the plaintiff's capacity as Speaker of the Assembly no longer existed at the time of filing the statement of claim on 15 May 2009 and the upshot of it all was this: that the plaintiff's action grounded on the assertion that he is still the Speaker of the Assembly is both untenable and unsustainable;

(b) furthermore, since the plaintiff's action is based wholly on matters that transpired during the proceedings of the Assembly on 7 May 2009, it follows that the defendant's action in the Assembly as the lawful Speaker in the course of exercising his functions and duties, was a matter concerning the Assembly's internal proceedings and, consequently, ousting any semblance of interference by the court;

(c) in the statement of claim, the plaintiff did not plead that it was the defendant who had assaulted him and that such an allegation was only raised in the plaintiff's affidavit;

(d) the plaintiff failed to plead in his statement of claim material facts to support the contention that the persons who assaulted him were indeed the defendant's agents and/or servants and it was for this reason that the plaintiff had no valid basis to link the unknown persons to the defendant or as the defendant's agents or servants; and finally

(d) the plaintiff's prayer for an injunction was held to be plainly and obviously unsustainable.

ANALYSIS

[13] The summary procedure under O 18 r 19 of the RHC should only be resorted to when it is conspicuously clear that the plaintiff's claim, on the face of it, is obviously unsustainable. Order 18 r 19(1)(b) or (1)(d) of the RHC states as follows:

> 19 Striking out pleadings and indorsements (O 18 r 19)
>
> (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement, of any writ in the action, or anything in any pleading or in the indorsement, on the ground that —
>
> (a) it is scandalous, frivolous or vexatious; or
>
> (b) it is otherwise an abuse of the process of the Court;
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

[14] While sitting on the High Court bench in *Pet Far Eastern (M) Sdn Bhd v Tay Young Huat & Ors* [1999] 5 MLJ 558, I did say that the root word is not 'unsustainable' but rather 'obviously', and that would mean that the claim must be plainly or evidently unsustainable in law. Thus, the court will only strike out a claim in plain and obvious cases and where the claim is obviously unsustainable (*Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corp Bhd* [1993] 3 MLJ 36 (SC); *Lai Yoke Ngan & Anor v Chin Teck Kwee & Anor* [1997] 2 MLJ 565 (FC); and *Arah Cipta Sdn Bhd & Anor v Kian Kee Sawmills (M) Sdn Bhd & Ors* [1997] 2 MLJ 11 (CA)).

[15] It must be borne in mind that the power to strike out must be exercised by the court sparingly (*Roslan bin Abdullah v New Zealand Insurance Co Ltd* [1981] 2 MLJ 324 (FC); *Datuk Ir Che Amran bin Mohd Yusoff v Yayasan Melaka & Ors* [2003] MLJU 7; *Seng Huat Hang Sdn Bhd & Ors v Chee Seng & Co Sdn Bhd* [1987] 1 MLJ 413; *Mooney & Ors v Peat, Marwick, Mitchell & Co & Anor* [1967] 1 MLJ 87; *Honan Plantations Sdn Bhd v Kerajaan Negeri Johor & Anor and another appeal* [1998] 2 MLJ 498 (CA); and *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corp Bhd*).

[16] It is a rule of thumb that if it can be shown that the pleadings do disclose some cause of action or that it has raised some question fit to be decided, then the case should be set down for argument notwithstanding that the chances of success are minimal (*Saripah bte Manap & Ors v Emar Sdn Bhd (in dissolution) & Ors* [1998] 1 MLJ 323).

[17] Of pertinence would be this. That pleadings must be entirely hopeless, baseless or without foundation in law or in equity before they can be struck out.

[18] In the present appeal, the plaintiff was trying to make good by affidavit evidence what was not pleaded in his statement of claim. This cannot be done and would certainly not be entertained (*Adib bin Mokhtar & Ors v Jason Chan Chee Khong & Anor* [1999] 2 MLJ 473).

[19] A complex case will not be summarily struck out (*Pacific Internet Ltd v Catcha.com Pte Ltd* [2000] 3 SLR 26). Here, the appeal is not complex. The learned High Court judge rightly held that art 72(1) of the Federal Constitution barred the court from questioning the validity of any proceedings in the Assembly.

[20] In *YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)* [2009] 4 MLJ 24 at p 59; [2009] 4 CLJ 253 at p 297, Augustine Paul FCJ writing for the Federal Court had this to say about art 72(1) of the Federal Constitution:

> It follows that article 72(1) must be read as being subject to the existence of a power or jurisdiction, be it inherent or expressly provided for, to do whatever that has been done. The court is empowered to ascertain whether a particular power that has been claimed has in fact been provided for. The issues raised by the applicants are therefore justiciable.

[21] There is art XXXVIA (36A) of the Laws of the Constitution of Perak Darul Ridzuan that should be referred to. It reads as follows (the relevant parts only):

> Speaker of the Legislative Assembly
>
> XXXVIA. (1) The Legislative Assembly shall from time to time elect —
>
> (a) as Speaker, such person as the Assembly may determine who is a member or qualified to be a member of the Legislative Assembly;
>
> (2) The Speaker may at any time resign his office and shall vacate his office —
>
> (b) if the Assembly at any time so resolves.

[22] It is indisputable that the Assembly has the power or jurisdiction to elect or dismiss the speaker. Here, the Assembly has validly elected the defendant as the speaker to replace the plaintiff and the court has no jurisdiction to interfere.

[23] What is said to be a scandalous pleading must surely vary from case to case. A totally irrelevant and wholly unnecessary allegations would be termed as scandalous (Re R (deceased) [1950] 2 All ER 117). What transpired in the Assembly on 7 May 2009 is of no concern to the court. It is certainly scandalous to make those allegations as contained in the statement of claim.

[24] In regard to the meaning of the words 'frivolous or vexatious', reference to what Lindley LJ said in *Attorney-General of the Duchy of Lancaster v London and North Western Railway Company* [1892] 3 Ch D 274 (CA) at p 277, should be referred to. There His Lordship aptly said:

> It appears to me that the object of the rule is to stop cases which ought not to be launched — cases which are obviously frivolous or vexatious, or obviously unsustainable; and if it will take a long time, as is suggested, to satisfy the court by historical research or otherwise that the county palatine has no jurisdiction, I am clearly of opinion that such a motion as this ought not to be made.

[25] When you talk about an abuse of the process of the court, it goes without saying that the court has an inherent jurisdiction to prevent an abuse of its process (*Raja Zainal Abidin bin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd* [1993] 3 MLJ 16 (SC)). Thus, when the learned High Court judge struck out the plaintiff's writ of summons and the statement of claim he was exercising his inherent jurisdiction to prevent an abuse of the court's process. The contents of the statement of claim contained particulars that were intended to embarrass the defendant and it was certainly an abuse of the process of the court when the plaintiff filed the statement of claim together with the writ of summons (*Ansa Teknik (M) Sdn Bhd v Cygal Sdn Bhd* [1989] 2 MLJ 423). The process of the court was certainly misused by the plaintiff.

[26] It would be ideal, at this juncture, to highlight certain issues germane to the occasion at hand.

The plaintiff cannot challenge the validity of the proceedings of the assembly and the court cannot interfere with the Assembly's resolution of removing and electing a speaker

[27] It is quite obvious that the plaintiff's action was premised on the purported fact that the plaintiff is still the lawful Speaker of the Assembly. The challenge mounted by the plaintiff was simply to circumvent the resolution of the Assembly in removing him as Speaker and replacing him with the

defendant. The statement of claim mirrors the intention of the plaintiff to remain as Speaker of the Assembly. For fear of repetition, prayer (d) of para 8 to the statement of claim is now reproduced once again:

> An injunction to prevent the defendant and/or his agents or servants from denying the plaintiff entry to the Assembly or prohibiting or obstructing the plaintiff in any way whatsoever from occupying the office of or carrying out his duties as the lawful Speaker of the Assembly.

[28] The above mentioned passage expresses the intention of the plaintiff to remain as Speaker of the Assembly, and the learned High Court judge saw through the plaintiff's ingenius scheme.

[29] It is emphasised, by way of a reiteration, that art 72(1) of the Federal Constitution should be vigorously applied against the plaintiff. The validity of the proceedings in the Assembly which must necessarily include the resolution by the Assembly to remove the plaintiff as speaker and to elect the defendant as Speaker should not be questioned.

[30] Prima facie evidence was made available to show that the plaintiff was removed as Speaker by way of a resolution of the Assembly during the sitting of the Assembly on 7 May 2009. And as a result thereto the defendant was duly elected as Speaker of the Assembly. See the letter of the secretary of the Assembly dated 15 June 2009 as reproduced earlier.

[31] In addition to that, there were 31 statutory declarations of the Perak State Legislative Assemblymen who in unison confirmed that the plaintiff had been removed as Speaker of the Assembly and that the defendant had been elected as Speaker of the Assembly on 7 May 2009. All these 31 statutory declarations were exhibited as exhibits in the defendant's affidavit that was affirmed on 24 July 2009 (see pp 199 — 261 of the appeal record, *bahagian* 'C', *Jilid* 3/4).

[32] All matters falling within the purview of the Assembly are outside the domain of the court and the learned High Court judge was correct in arriving at his decision. Towards this end, the following authorities are relevant.

[33] *Fan Yew Teng*, a member of Parliament, was convicted under the Sedition Act 1948 (Revised 1969) *Public Prosecutor v Ooi Kee Saik & Ors* [1971] 2 MLJ 108. On appeal to the Federal Court, his conviction was quashed because the trial, though impeccable, was a nullity; *Fan Yew Teng v Public Prosecutor* [1971] 2 MLJ 271. He was retried before another judge and was again convicted; *Public Prosecutor v Fam Yew Teng* [1975] 1 MLJ 176. His appeal to the Federal Court was dismissed. *Fan Yew Teng v Public Prosecutor*

[1975] 2 MLJ 235. He then appealed to the Privy Council, who likewise dismissed the appeal; *Tan Mooi Liang v Lim Soon Seng & Ors* [1977] 2 MLJ 125. Whilst his appeal was pending in the Federal Court, he was informed by the secretary of the Dewan Rakyat (House of Representatives) that he was automatically disqualified and his seat in Parliament was vacant, and that steps were taken to hold a by-election. *Fan Yew Teng* brought proceedings in the High Court to contest the ruling. It was held that the seat was not vacant because the disqualification was not automatic; *Fan Yew Teng v Setia Usaha, Dewan Ra'ayat & Ors* [1975] 2 MLJ 40. Subsequently, following a motion, the Dewan Rakyat referred the question relating to his disqualification to the committee of privileges. While the matter was in this committee and fearing that he would be disqualified, he instituted further judicial proceedings. Chang Min Tat J, held that Parliament's power over this matter is final and cannot be interfered with by the court; *Fan Yew Teng v Government of Malaysia* [1976] 2 MLJ 262.

[34] In *Burhan Ating & Ors v Directors of Lands & Surveys & Ors* [1992] 2 CLJ (Rep) 211, the court held that its jurisdiction had been excluded by statute. At pp 216–217, this was what Ian HC Chin JC (as he then was) said:

> The court cannot grant the declaration (a) because it is not only that its jurisdiction had been excluded by s 41(2) of the Land Ordinance but because also the jurisdiction to grant such relief, which flows from the declaration, is given to the collector of land revenue and to the Director of Lands and Surveys respectively under ss 14 and 9 of the Land Ordinance. In so far as the claim (a) is based otherwise than on native customary rights, the claim (a) is doomed to failure right from the start as s 6 of the Land Ordinance expressly provides that unlawful occupation of state land cannot establish any right. If the claim (a) is for the said land to be transferred to the plaintiffs then the claim (a), which would then be a claim for a mandatory injunction disguised as a claim for a declaration, will also fail in view of the prohibition by s 29 of the Government Proceedings Ordinance 1956 and s 54 of the Specific Relief Act 1950 against the grant of such order, the present action of the plaintiffs not being an action under the provisions of O 53 of the Rules of the High Court.
>
> Claim (b)
>
> (b) A declaration that the purported cancellation of the plaintiffs' application and transfer of the concession to other parties is void ab initio and illegal.
>
> This claim (b) presupposes that the plaintiffs have established their right to a title to the said land. As pointed out earlier, the Director of Lands & Durveys has a discretion whether to alienate land to anyone and his decision cannot be appealed against. It has also been pointed out earlier that the collector has been empowered to decide on claims for native customary rights and been empowered to decide whether to pay compensation or to issue title to the successful claimant of native customary rights and provisions exist for appeal against such decision of the collector with the final appeal going to the High Court in Borneo. If the court is to grant the declaration in claim (b) the court would be taking over the jurisdiction of the director of lands & surveys and

of the collector which the Land Ordinance had conferred on them. This the court cannot and must not do in view of the prohibition of s 41(2) of the Land Ordinance and the court can only come in where the matter is properly, on appeal, before the Court. This claim (b) is therefore plainly and obviously unsustainable.

[35] In *Dato' Hj Shahari Hj Hassan v Hj Shamsudin Talib & Ors* [1998] 3 MLJ 705; [1998] 4 CLJ 859, the Court of Appeal agreed with the decision of learned judge of the High Court who refused to strike out the plaintiff's claim on the ground that the court would not interfere with matters pertaining to *Adat* of Negeri Sembilan.

[36] In *Dato' Menteri Othman bin Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29; [1984] 1 CLJ (Rep) 98, the Federal Court also dealt with the issue of the *Adat* law of Negeri Sembilan in particular pertaining to the appointment of a new *Undang* under the Negeri Sembilan *Adat* and the Federal Court struck out the plaintiff's action on the basis that it was scandalous, frivolous, vexatious and an abuse of the process of the court and the Federal Court also held that there was another authoritative body which had been given powers under the Negeri Sembilan Constitution to decide the matter.

[37] The same principle was also applied by Low Hop Bing J (now JCA) in *Syed Abu Bakar Syed Hassan & Ors v Zainal Ariffin Hj Ibrahim & Ors* [2005] 7 CLJ 457.

[38] All these authorities paved the way for this court to decline jurisdiction and not to grant any relief in favour of the plaintiff because any relief extended to the plaintiff would have the effect of usurping the powers of the Assembly. Consequently, the learned High Court judge was right when he held that the Assembly has the power to elect and dismiss the speaker and that the issue of who is the validly appointed speaker is not an issue within the court's jurisdiction to adjudicate.

As Speaker of the Assembly, the defendant's actions in exercising his functions and duties in the Assembly must be held to be privileged

[39] The plaintiff's statement of claim pleaded and alluded to matters that transpired during the proceedings of the Assembly on 7 May 2009 and that was the time when the defendant was exercising his functions and duties as the Speaker of the Assembly to maintain order in the Assembly.

[40] Article XLIV (44)(1)) of the Laws of the Constitution of Perak Darul Ridzuan makes reference to the power of the Assembly to regulate its own procedure and it is ideal to refer to it. In its original text, it is worded as follows:

> Procedure of Legislative Assembly
>
> XLIV (1) Subject to the provisions of the Federal Constitution and this Constitution, the Legislative Assembly shall regulate its own procedure and may, from time to time, make, amend and revoke Standing Rules and Orders for the regulation and orderly conduct of its own proceedings and the conduct of business.

[41] The standing orders have now been made. Standing orders 44(2) and 44(7) state as follows:

> 44 Order in the Assembly
>
> (2) The Chair shall order any member whose conduct is grossly disorderly to withdraw immediately from the Assembly during the remainder of that day's sitting, and the Bentara Dewan shall act on such orders as he may receive from the Chair in pursuance of this Standing Order; but if, on any occasion, the Chair deems that the powers under the previous provisions of this Standing Order are inadequate, he may name such member or members, in which event the same procedure shall be followed as is prescribed in paragraphs (3), (4), (5) and (6).
>
> (7) Members who are ordered to withdraw under paragraph (2) or who are suspended from the service of the Assembly under paragraphs (3) and (6) shall forthwith withdraw from the precincts of the Assembly and shall be excluded therefrom for the remainder of the sitting or for the period of their suspension, as the case may be.

[42] While standing order 90 is worded in this way:

> 90 Residuary powers
>
> All matters not specifically provided in these Standing Orders and all questions relating to the detailed working of these Standing Orders shall be regulated in such manner, not inconsistent with these Standing Orders, as Mr. Speaker may from time to time directs; and in giving any such direction Mr. Speaker shall have regard to the usages of Commonwealth Parliamentary practice so far as such usages can be applied to the proceedings of the Assembly.

[43] It is now opportune to ascertain the parliamentary practice in the Commonwealth. For this purpose, reference should be made to *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, (23rd Ed), 2004 at p 449 which sets out the power of the chair to enforce order:

> Grossly disorderly conduct

> To prevent any Member being taken unawares it is usual for the Speaker or the Chairman repeatedly to warn any Member who may be transgressing the rules of debate or otherwise conducting himself in a disorderly manner, before ordering him to withdraw from the House or naming him. When, however, a Member persists in disorderly conduct or conducts himself in a grossly disorderly manner the Speaker is enjoined by Standing Order No 43 either (i) forthwith to order him to withdraw from the House for the remainder of the sitting, or (ii) if he thinks the authority and dignity of the House would not be sufficiently vindicated by excluding the offender from the House for the remainder of the sitting, to name him. If a Member who has been ordered to withdraw from the House does not immediately obey, the Speaker or Chairman may either direct the Serjeant at Arms to remove him, or name the Member to the House.

[44] Thus, looking at the scenario of the events that happened in the Assembly on 7 May 2009, the position was like this. That whatever the defendant as the lawful Speaker of the Assembly after being elected during the sitting of the Assembly on 7 May 2009 did, the defendant was merely exercising his functions and duties as Speaker of the Assembly in accordance with the powers granted to him under the Laws of the Constitution of Perak Darul Ridzuan, the standing orders as well as the parliamentary practice as explained by the *23rd Ed of Erskine May's*.

[45] And what the defendant did on 7 May 2009 after being elected as Speaker of the Assembly falls squarely under para 3 of the Schedule to the Legislative Assembly (Privileges) Enactment 1959 which states as follows:

> Immunity of members from civil or criminal proceedings for anything done or said before the Assembly.
>
> 3 No member shall be liable to any civil or criminal proceedings, arrest, imprisonment, or damages by reason of any matter or thing which he may have brought by petition, bill, resolution, motion or otherwise, or have said before the Assembly or any committee.

[46] Paragraph 1 of the Schedule to the Legislative Assembly (Privileges) of the Enactment 1959 defines the word 'member' to mean 'a member of the Assembly'.

[47] Now, the defendant's instructions and orders to the *Bentara Dewan* to remove the plaintiff from the Speaker's chair was a 'matter or thing' which was brought 'otherwise' than in accordance with his powers as speaker pursuant to the laws of the Constitution of Perak Darul Ridzuan and the standing orders and whatever the defendant 'said before the Assembly' would be protected under para 3 of the Schedule to the Legislative Assembly (Privileges) Enactment 1959. In short, whatever the defendant did on 7 May 2009 after

being elected as the Speaker must be held to be privileged. The cloak of immunity has completely shrouded the defendant on 7 May 2009.

[48] Pages 102–103 of the 23rd Ed of *Erskine May's* carry the following interesting passages:

> The fullest recognition was accorded by the courts to the rights of both Houses to exclusive parliamentary cognizance of their proceedings even in matters prescribed by statute in the judgment given in the case of *Bradlaugh v Gossett* in 1884. Question arose whether Bradlaugh, who had been returned a member, had qualified himself to sit by making an affirmation instead of taking the oath. Subsequently, following re-election, he was prevented from taking the oath by an order of the House. In the course of his judgment in an action seeking (inter alia) to have the order declared void, Stephen J declared that even if the House of Commons forbade a Member to do what statute required him to do and, in order to enforce the prohibition, excluded him from the House, the court had no power to interfere:
>
> the House of Commons is not subject to the control of …. [the] courts in its administration of that part of the statute law which has relation to its own internal proceedings …. Even if that interpretation should be erroneous [the] court has no power to interfere with it, directly or indirectly (*Bradlaugh v Gosset* (1883–84) 12 QBD 271 at pp 278–86).
>
> It has been judicially recognised that Parliament is the master of the application of its own procedures to the business before it.

[49] Reference to the classic case of *Bradlaugh v Gossett* (1884) 12 QBD 271 would certainly be ideal. In that case, the plaintiff, Charles Bradlaugh, was duly elected a burgess to serve in the House of Commons for Northampton, and was entitled to take the oath by law prescribed to be taken by members of the House of Commons, and to sit and vote in the House as one of the representatives of Northampton. In May 1883, Mr Bradlaugh required the speaker to call him to the table for the purpose of taking the oath. The speaker did not do so. On the 9 July, the House of Commons resolved, 'that the Serjeant-at-Arms do exclude Mr Bradlaugh from the House until he shall engage not further to disturb the proceedings of the House'. Mr Bradlaugh thereupon wrote a letter to the Serjeant-at-Arms asking him whether he understood the order of the house to mean that he was to prevent Mr Bradlaugh by actual force from entering the house for the purpose of taking his seat. The Serjeant-at-Arms replied that it would be his duty to exclude Mr Bradlaugh from the House till otherwise instructed by the House or the Speaker. Some correspondence (set out in an amendment made by consent in the statement of claim) also passed between Mr Bradlaugh and the Speaker, the effect of which was that the speaker informed Mr Bradlaugh that his exclusion from the house would continue 'until he should engage not to attempt to take the oath in disregard of the resolution of the House now in force'. The statement of claim claimed —

A firstly, that a declaration that the order of the House of July 9 be declared to be beyond the power and jurisdiction of the House to make, and to be void — secondly, an order restraining the Serjeant-at-Arms from preventing Mr Bradlaugh by force from entering the house and taking the oath as a member — thirdly, such further or other relief as he might be deemed entitled to. To this B there was a demurrer, on the ground that the statement of claim did not state any matter for which an action could be maintained, and did not ask any relief which could be by law given in the action.

C **[50]** Writing a separate judgment, Lord Coleridge CJ had this to say at p 275:

> Alongside, however, of these propositions, for the soundness of which I should be prepared most earnestly to contend, there is another proposition equally true, equally well established, which seems to me decisive of the case before us. What is said or done within the walls of Parliament cannot be inquired into in a court of law. D On this point all the judges in the two great cases which exhaust the learning on the subject — *Burdett v Abbott* 14 East, 1, 148 and *Stockdale v Hansard* 9 Ad & El 1 — are agreed, and are emphatic. The jurisdiction of the houses over their own members, their right to impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellenborough, 'They would sink into utter E contempt and inefficiency without it' (*Burdett v Abbott* 14 East at p 152).

[51] Continuing at p 276, Lord Coleridge CJ aptly said:

> I need not discuss at any length the fact that the defendant in this case is the F Serjeant-at-Arms. The Houses of Parliament cannot act by themselves in a body: they must act by officers; and the Serjeant-at-Arms is the legal and recognised officer of the House of Commons to execute its orders. I entertain no doubt that the House had a right to decide on the subject matter, have decided it, and have ordered their officer to give effect to their decision. He is protected by their decision. They have G ordered him to do what they have a right to order, and he has obeyed them.

[52] Further down the same page and spilling over to p 277, Lord Coleridge CJ concluded in trenchant terms:

> H It is said that in this case the House of Commons has exceeded its legal powers, because it has resolved that the plaintiff shall not take an oath which he has a right to take, and the threatened force is force to be used in compelling obedience to a resolution in itself illegal. But there is nothing before me upon which I should be justified in arriving at such a conclusion in point of fact. Consistently with all the I statements in the claim, it may be that the plaintiff insisted on taking the oath in a manner and under circumstances which the House had a clear right to object to or prevent. Sitting in this seat I cannot know one way or the other. But, even if the fact be as the plaintiff contends, it is not a matter into which this court can examine. If injustice has been done, it is injustice for which the courts of law afford no remedy. On this point I agree with and desire to adopt the language of my brother Stephen.

> The history of England, and the resolutions of the House of Commons itself, shew that now and then injustice has been done by the House to individual members of it. But the remedy, if remedy it be, lies, not in actions in the courts of law (see on this subject the observations of Lord Ellenborough and Bayley J, in *Burdett v Abbott* 14 East 150, 151, and 160, 161), but by an appeal to the constituencies whom the House of Commons represents.
>
> It follows that this action is against principle and is unsupported by authority, and that therefore the demurrer must be allowed, and that there must be judgment for the defendant.

[53] The next case to refer to would be the case of *Jamaluddin Mohd Radzi & Ors v Sivakumar Varatharaju Naidu* [2009] 3 CLJ 785, a decision of Balia Yusof Wahi J. What His Lordship said at p 794 merits reproduction:

> I must confess that the learned counsel's submission and reference to Erskine May's Treatise on the Law, Privileges, Proceedings And Usage of Parliament and the principle in *Bradlaugh v Gossett* (1884) 12 QBD 271 is very enlightening. What is said or done within the walls of Parliament cannot be inquired into a court of law and the jurisdiction of the House over their own members, their right to impose discipline within their walls is absolute and exclusive. Considering the above, I do not think there is any departure in art XXXIII of the Perak State Constitution and the said para 3 of the Schedule of the Legislative Assembly (Privileges) Enactment 1959 from this principle. So is my reading of art 72(1) of the Federal Constitution, which in my view is a reinforcement of the said para 3 on the immunity from court process. It is also my view that both the authorities of *Fan Yew Ting*'s case and *Lim Cho Hock*'s case cited by learned counsel uphold very same concept of immunity.

[54] In *Fan Yew Teng v Government of Malaysia* [1976] 2 MLJ 262 which was referred to earlier, what Chang Min Tat J (as he then was) said at p 264 was quite apt:

> that the control of each House over its internal proceedings is absolute and cannot be interfered with by the courts.

[55] Likewise here, the court has no power to interfere with the internal management of the Assembly. As the valid and lawful Speaker of the Assembly, what the defendant did on 7 May 2009 in order to maintain order and peace in the Assembly in view of the unruly behaviour of the plaintiff which was obstructing or disrupting the orderly business of the Assembly, was above board and cannot be questioned by the court. What transpired within the four walls of the Assembly on 7 May 2009 cannot be examined by the court. Immunity has set in.

ARGUMENTS ADVANCED BY THE PARTIES

[56] It was argued on behalf of the plaintiff that the question whether the defendant was immune from proceedings would be a triable issue and not suitable for striking out under O 18 r 19(1)(b) or (1)(d) of the RHC.

[57] It was pointed out that the defendant would only be immune if it can be proved that the proceedings had begun. It was emphasised that the defendant was elected as the Speaker of the Assembly before the opening of business by HRH the Raja Muda and for that very reason the defendant's election was questionable and the matter should proceed to trial.

[58] Since the defendant was not an elected Assemblyman, the defendant has to prove that he was elected and the defendant must further prove that the proceedings have begun before the immunity kicks in. These points were vigorously advanced by the plaintiff's counsel. Flowing from that it was argued that if the defendant failed to prove that he has been properly elected he must be held liable in law and possibly for battery and assault under s 351 of the Penal Code. And even if immunity kicks in to protect the defendant it was argued that the defendant still has to prove that the assault and battery were committed within the meaning of the word 'proceedings'. The plaintiff posed a question and that was whether taking part in the proceedings include beating up your opponent?

[59] It was submitted on behalf of the plaintiff that the learned High Court judge erred in that he assumed:

(a) that the proceedings had begun;

(b) that the defendant was properly elected;

(c) that the defendant was a 'qualified' person under art XXXVIA (36A) of the Laws of the Constitution of Perak Darul Ridzuan; and

(d) that the blanket immunity prevented civil or criminal proceedings against the defendant.

[60] Next, it was argued by the plaintiff that although the learned High Court judge had rightly applied the case of *Bradlaugh v Gossett* for the proposition that what transpired in the Assembly was immune from examination by outside bodies including the court yet the learned High Court judge was wrong in concluding that the immunity extended to criminal and illegal acts.

[61] Learned counsel for the plaintiff referred to the judgment of Stephen J in *Bradlaugh v Gossett* to drive home the point that immunity in the Assembly

does not extend to acts under the criminal law such as murder, rape or even bribery. The passage in the judgment of Stephen J in *Bradlaugh v Gossett* at p 283 was then referred to, it reads as follows:

> Before leaving this part of the subject, I may observe that in my judgment the case before us differs widely from a possible case suggested in argument in *Burdett v Abbott* 14 East at p 128, as to the effect of an order by the House of Commons to put a member to death or to inflict upon him bodily harm. Of such a case it is enough to say, as Lord Ellenborough said, that it will be time to decide it when it arises. The only force which comes in question in this case is, such force as any private man might employ to prevent a trespass on his own land. I know of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice.

[62] But, a different complexion was added when Stephen J in *Bradlaugh v Gossett* at pp 283–284 said as follows:

> One of the leading authorities on the privilege of parliament contains matter on the point which shews how careful parliament has been to avoid even the appearance of countenancing such a doctrine. This is the case of *Sir John Eliot, Denzil Hollis, and others*, of which a complete history is given in 3 Howell's State Trials, at pp 294–336. In this case the defendants were convicted in 1629 on an information before the Court of King's Bench for seditious speeches in parliament and also for an assault on the Speaker in the chair. They pleaded to the jurisdiction that these matters should be inquired into in Parliament and not elsewhere; and their plea was overruled. In 1666 this judgment was reversed upon writ of error; one error assigned being that the speaking of the seditious words and the assault on the speaker were made the subject of one judgment; whereas the seditious speech, if made in parliament, could not be inquired into out of Parliament, even if the assault upon the Speaker could be tried in the Court of King's Bench; hence there should have been two separate judgments. This case is the great leading authority, memorable on many grounds, for the proposition that nothing said in Parliament by a member as such, can be treated as an offence by the ordinary courts. But the House of Lords carefully avoided deciding the question whether the Court of King's Bench could try a member for an assault on the speaker in the house.

[63] So, 'the question whether the Court of King's Bench could try a member for an assault on the Speaker in the House' was left unanswered.

[64] Undaunted, learned counsel for the plaintiff referred to *Sir Thomas Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, (16th Ed), 1957 at p 65 where it was stated that:

> On the other hand, it would be hard to show that a criminal act committed in the House by an individual member was part of the proceedings of the House.

[65] But the preceding paragraphs of p 65 of *Erskine May's*, (16th Ed), 1957 carry the following passages:

> In *Bradlaugh v Erskine*, the Deputy-Serjeant-at-Arms was held to be justified in committing the assault with which he was charged, since it was committed in Parliament, in pursuance of the order of the House, to exclude Bradlaugh from the House.
>
> Just as members in debating and voting the order would, as taking part in a proceeding in Parliament, not be amenable to the courts, so an officer in carrying out an order within the precincts of the House is taking part in a proceeding in Parliament, and is in the same position with regard to the courts as the members who voted the order. As Lord Coleridge said, 'The Houses cannot act by themselves as a body; they must act by officers' (12 QBD 276).

[66] With these different versions, learned counsel for the plaintiff argued that the question of the defendant's immunity was still uncertain.

[67] The issue of immunity was so difficult that it cannot, according to learned counsel for the plaintiff, be dealt with at an interlocutory stage and that it should proceed for trial.

[68] Has the defence of immunity been successfully raised by the defendant? This was the question posed by learned counsel for the plaintiff bearing in mind that no statement of defence was filed. However, affidavits were exchanged between the parties.

[69] Learned counsel for the defendant responded and he rightly submitted that essentially the plaintiff's claim was a disguised attempt to reassert the plaintiff's claim as a Speaker of the Assembly.

[70] While acknowledging that in a 'proceeding' of the Assembly, what transpired therein would trigger the immunity of the speaker, learned counsel for the plaintiff argued that the defendant had used the word 'sitting' and not 'proceeding' in one of his affidavits.

[71] Learned counsel for the defendant drew our attention to the following particulars:

(a) the statement of claim at para 3 made reference to the fact that the 'proceeding' had begun (see p 44 of the appeal record, *bahagian* 'A' at *Jilid* 1/4);

(b) the plaintiff's affidavit affirmed on 20 May 2009 at para 5 showed that the 'proceeding' had already started (see p 67 of the appeal record, *bahagian* 'B' at *Jilid* 2/4); and

(c) the plaintiff's affidavit in reply affirmed on 14 July 2009 at para 3 showed that the 'proceeding' had already started (see p 96 of the appeal record, *bahagian* 'B' at *Jilid* 2/4).

[72] All these three pieces of evidence showed that the 'proceedings' of the Assembly had started and the immunity of the defendant as the Speaker of the Assembly would be automatically triggered in his favour. These were the submissions of learned counsel for the defendant and we totally agreed with him.

[73] Next, learned counsel for the defendant referred to the *Hansard* and made reference to it. We endorsed such an approach.

[74] The proceedings in the Assembly are recorded in the official report of the Assembly — *Hansard*. The House of Lords in *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 accepted that reference could be made to law commission reports and to the reports of Parliamentary committees in order to establish the defect in the previous law which parliament was seeking to redress.

[75] Again, in *Pickstone and others v Freemans plc* [1989] AC 66; [1988] 2 All ER 803, reference to *Hansard* was made and it was regarded as justified for the purpose of determining the purpose of the legislation and government policy.

[76] In *Pepper (Inspector of Taxes) v Hart* [1993] 1 All ER 42; [1992] 3 WLR 1032, the House of Lords categorically conceded the limited right to resort to *Hansard* as an aid to interpretation. However, the attorney general argued that any relaxation in the rules would amount to a questioning of the freedom of speech in debate in Parliament contrary to art IX of the Bill of Rights 1689. But, Lord Browne-Wilkinson, for the majority, rejected that reasoning, declaring that far from 'questioning the independence of Parliament and its debates, the courts would be giving effect to what is said and done there'.

[77] In *Wilson v First County Trust Ltd (No 2)* [2001] 3 WLR 42, the Court of Appeal referred to *Hansard* not, as in *Pepper (Inspector of Taxes) v Hart* to identify the intention of Parliament in order to give effect to it, but rather to understand the reason which led parliament to enact a particular provision in the form that it took and to identify whether the statute was compatible with Convention rights.

[78] Statute wise, we have s 78 of the Evidence Act 1950 that would clear the air and allow the court to refer to *Hansard*. That section reads as follows:

78 Proof of certain official documents.

(1) The following public documents may be proved as follows:

A (b) the proceedings of Parliament or of any of the federal legislatures that existed in Malaysia before Parliament was constituted or of the legislature of any State –

by the minutes of the body or by the published Acts of Parliament, Ordinances, Enactments or abstracts or by copies purporting to be printed by the authority of the Government concerned; …

B

[79] Page 13 of *Hansard* showed that the plaintiff was removed as the Speaker of the Assembly. In its original Malay language text, it was recorded as follows:

C

PENOLONG SETIAUSAHA: Usul memecat Speaker telah diluluskan dengan disokong oleh 31 Ahli Dewan Negeri … (AHLI-AHLI PEMBANGKANG BERTEMPEK).

D **[80]** At p 14 of *Hansard*, the following recordings were noted in its original Malay language text that clearly showed that the defendant was duly elected as the Speaker of the Assembly:

E

Y.B. TIMBALAN YANG DIPERTUA: Ahli-Ahli Yang Berhormat sekalian sebagai Speaker usul … (GANGGUAN) … terhadap usul perlucutan jawatan Yang Dipertua Dewan Negeri Perak Darul Ridzuan yang telah dipersetujui … (GANGGUAN). Setiausaha Dewan telah pun menghantar notis pemilihan yang baru Yang Dipertua Dewan Negeri Yang Kedua Belas Perak Darul Ridzuan, 27 April 2009 sehingga 30 April 2009, hanya satu saja pencalonan yang diperolehi. Calon yang dicadangkan itu telah bersetuju menerima pencalonan dan bersedia
F berkhidmat dipilih sebagai Yang Dipertua. Oleh itu, sekarang saya mempersilakan Yang Amat Berhormat Menteri Besar mengemukakan cadangannya … (GANGGUAN).

[81] Further down the same p 14 of *Hansard*:

G

Y.B. TIMBALAN YANG DIPERTUA: Ahli Yang Berhormat, oleh kerana terdapat satu sahaja cadangan yang diterima dan telah mendapat sokongan maka ini saya mengisytiharkan Y. Bhg. Dato' R. Ganesan dipilih menjadi Tuan Yang Dipertua Dewan Negeri Yang Kedua Belas Perak Darul Ridzuan. Dipersilakan Tuan Yang
H Dipertua Dewan tampil ke hadapan … (GANGGUAN). Dipersilakan Menteri Besar Perak Darul Ridzuan menyarungkan jubah Tuan Yang Dipertua … (GANGGUAN). Dipersilakan Tuan Yang Dipertua Dewan Negeri Perak Darul Ridzuan Yang Kedua Belas mengambil tempat … (GANGGUAN).

I **[82]** It is our judgment that what transpired in the Assembly on 7 May 2009 was perfectly legitimate. It was validly done according to the law and it cannot be questioned by this court.

[83] At the time the defendant was elected as the Speaker of the Assembly, HRH the Raja Muda has not delivered his royal address. To regularise the proceedings of the Assembly, the Menteri Besar by way of a motion under Standing Order 13(2) of the standing orders moved the Assembly accordingly. standing order 13(2) reads as follows:

> 13(2) The Assembly may, upon a motion to be moved by the Menteri Besar or in his absence a member of the State Executive Council to be decided without amendment or debate which may be made without notice and shall take precedence over all other business, decide to proceed to any particular business out of the regular order.

[84] This was done and the *Hansard* at pp 23–25 reflected what had transpired:

> Y.BHG. DATO' YANG DIPERTUA: Ahli-Ahli Yang Berhormat, di bawah Perintah Tetap 13(1) urusan-urusan bagi tiap-tiap persidangan hendaklah mengikut aturan seperti peruntukan Perintah Tetap 13 melainkan Dewan menetapkan aturan. Saya sebagai Speaker dengan ini menjemput Dewan membuat ketetapan urusan persidangan.
>
> (DEWAN DALAM KEADAAN KELAM KABUT)
>
> Y.BHG. DATO' YANG DIPERTUA: Saya minta bantuan polis supaya Ahli Yang Berhormat Hutan Melintang jangan ganggu Yang Amat Berhormat Menteri Besar. Yang Berhormat Hutan Melintang, Yang Berhormat Hutan Melintang jangan ganggu Yang Amat Berhormat.
>
> Y.A.B. MENTERI BESAR: Saya, Zambry bin Abd. Kadir sebagai Menteri Besar Perak dengan ini mengusulkan agar urusan-urusan persidangan ini beralih aturan bagi menetapkan urusan-urusan selepas ini diikuti dengan doa dan titah ucapan D.Y.M.M. Pemangku Raja Perak Darul Ridzuan … (GANGGUAN).
>
> Y.BHG. DATO' YANG DIPERTUA: Yang Berhormat Hutan Melintang jangan ganggu Yang Amat Berhormat.
>
> Y.A.B. MENTERI BESAR: Saya, Zambry bin Abd. Kadir sebagai Menteri Besar Perak dengan ini mengusulkan agar urusan-urusan persidangan ini beralih aturan bagi menetapkan urusan-urusan selepas ini diikuti dengan doa dan titah ucapan D.Y.M.M. Pemangku Raja Perak Darul Ridzuan dan selepas itu mengikut arahan-arahan Yang Dipertua mengikut kesesuaian dan keadaan semasa. Terima kasih.
>
> Y.BHG. DATO' YANG DIPERTUA: Sokongan?
>
> Y.B. DATO' RAMLY BIN ZAHARI: ADUN Manong menyokong.
>
> Y.BHG. DATO' YANG DIPERTUA: Ahli-Ahli Yang Berhormat, terdapat satu usul agar Dewan disambung dan diteruskan dengan doa dan titah ucapan D.Y.M.M. Pemangku Raja Perak Darul Ridzuan seperti diarahkan dan ada sokongan.
>
> (AHLI-AHLI PEMBANGKANG MENEPUK-NEPUK MEJA DAN BERSUARA 'BUBAR, BUBAR, BUBAR …')

Y.BHG. DATO' YANG DIPERTUA: Terdapat satu usul agar urusan disambung dan diteruskan dengan doa dan titah ucapan D.Y.M.M. Pemangku Raja Perak Darul Ridzuan yang tidak dibahaskan. Sekarang saya jemput Ahli-Ahli Yang Berhormat mengundi, Ahli-Ahli yang bersetuju sila bersuara 'setuju' (AHLI-AHLI KERAJAAN DAN BEBAS BERSUARA 'SETUJU') dan yang tidak bersetuju, sila bersuara 'tidak' (TIADA YANG BERSUARA 'TIDAK' TETAPI AHLI-AHLI PEMBANGKANG BERSUARA 'BUBAR, BUBAR, BUBAR'). Maka usul itu diluluskan.

(DEWAN DALAM KEADAAN KELAM KABUT)

Y.BHG. DATO' YANG DIPERTUA: Yang Berhormat, Yang Berhormat, sila duduk di tempat masing-masing. Jika tidak duduk di tempat masing-masing saya akan menggunakan Perintah Tetap 44(2). Bentara, saya telahpun arah Bentara keluarkan Yang Berhormat Teja dari Dewan dan mengikut Perintah Tetap 44(2), saya dengan ini memerintah agar Yang Berhormat Simpang Pulai dikeluarkan serta-merta dari Dewan persidangan pada hari ini. Bentara, sila jalankan perintah. Bentara, sila jalankan perintah. (GANGGUAN) Saya sebagai Speaker dipilih oleh majoriti, saya arah Bentara mengikut arahan, jalankan perintah. Ahli-Ahli Yang Berhormat, sekarang kita adakan membaca doa.

PENOLONG SETIAUSAHA: (MEMBACA DOA)

Y.BHG. DATO' YANG DIPERTUA: Ahli-Ahli Yang Berhormat, sebentar lagi D.Y.M.M. Pemangku Raja Perak Darul Ridzuan akan menyampaikan titah ucapan dan saya memohon untuk meninggalkan Dewan ini sebentar bagi menjemput D.Y.M.M. Pemangku Raja Perak Darul Ridzuan. Dewan ditangguhkan sebentar.

(Y.BHG. DATO' YANG DIPERTUA MENJEMPUT D.Y.M.M. PEMANGKU RAJA PERAK DARUL RIDZUAN DAN D.Y.T.M. RAJA PUAN BESAR PERAK DARUL RIDZUAN)

BENTARA; Duli Yang Maha Mulia Pemangku Raja Perak Darul Ridzuan dan Duli Yang Teramat Mulia Raja Puan Besar Perak Darul Ridzuan.

(AHLI-AHLI PEMBANGKANG BERDIRI DI HADAPAN PETARAKNA DAN Y.B. DATO' SERI MOHAMMAD NIZAR BIN JAMALUDDIN MENYATAKAN SESUATU YANG PERKATAANNYA TIDAK JELAS)

Y.BHG. DATO' YANG DIPERTUA: Bacaan Doa oleh Sahibus Samahah Mufti Kerajaan Negeri Perak.

D.Y.M.M. PEMANGKU RAJA PERAK DARUL RIDZUAN: Nanti dulu. Dato' Seri Nizar dan Dato' Ngeh datang ke sini.

(Y.B. DATO' SERI IR HAJI MOHAMMAD NIZAR BIN JAMALUDDIN DAN Y.B. DATO' NGEH KOO HAM DITITAH MENGHADAP)

D.Y.M.M. PEMANGKU RAJA PERAK DARUL RIDZUAN: (Beta tidak mahu terlibat dalam perkara ini. Beta mahu memberi titah ucapan, sila hormati titah beta bila beta menyampaikannya. Adakah kamu faham? Jika kamu mahu bekerja di bawah beta di masa hadapan, kamu kena menghormati titah ucapan beta. Faham? Sila pergi dan beritahu perkara ini kepada ADUN PR yang berdiri di depan petarakna DiRaja supaya duduk di tempat masing-masing.) (Percakapan ini didengar melalui sistem pembesar suara oleh pihak media dan dilaporkan dalam akhbar NST pada 8 Mei 2009)

(AHLI-AHLI PEMBANGKANG MENGAMBIL TEMPAT MASING-MASING SETELAH Y.B. DATO' SERI IR HAJI MOHAMMAD NIZAR BIN JAMALUDDIN DAN Y.B. DATO' NGEH KOO HAM SELESAI MENGHADAP D.Y.M.M. PEMANGKU RAJA PERAK DARUL RIDZUAN)

Y.BHG. DATO' YANG DIPERTUA: Ahli-Ahli Yang Berhormat, Titah Ucapan Perasmian Penggal Kedua Dewan oleh D.Y.M.M. Pemangku Raja Perak Darul Ridzuan.

[85] Thus, on that fateful day, the order of the 'proceeding' was changed. The royal address came after the 'proceeding' or 'sitting' had started.

[86] Standing Order 13(1) states as follows:

Order of business

13. (U)nless the Assembly otherwise directs, the business of each sitting shall be transacted in the following order: …

[87] The word 'sitting' is used. It is our judgment that the word 'sitting' and the word 'proceeding' are the same. It is just like calling a rose by a different name.

[88] From the *Hansard*, the conclusions are clear. Firstly, the plaintiff was removed as the Speaker of the Assembly. Secondly, the defendant was duly elected as the Speaker of the Assembly. It is as simple as that. Nothing complex about this case as to merit a trial. There was no necessity to order an injunction. The defendant is now the Speaker of the Assembly.

[89] It is also our judgment that the instructions and orders to the *Bentara Dewan* by the defendant to remove the plaintiff from the Dewan falls squarely under the principle of immunity in that the defendant is immune or not open to civil or criminal proceedings.

[90] In regard to the failure to plead material facts in the statement of claim, the plaintiff submitted that it was not necessary and in any event the statement of claim could be amended. While the defendant argued that it was crucial to plead material facts because of the allegations, firstly, that the defendant's servants and/or agents assaulted the plaintiff and, secondly, that it was upon the specific instructions of the defendant that the defendant's servants or agents carried out the unlawful act of evicting the plaintiff from his seat and from the Assembly in the presence of the defendant.

[91] Now, in the plaintiff's affidavit in reply to the striking out that was filed by the defendant as seen at pp 99–101 of the appeal record, *bahagian* 'B' at *Jilid*

2/4, the plaintiff categorically averred that he could not identify the culprits or the agents of the defendant. Paragraph 4 of the plaintiff's affidavit in reply was worded in its original Malay language text in this way:

> Oleh itu defendan tiada apa-apa kuasa untuk mengarahkan agen-agennya (yang tidak dikenali) untuk menghalau saya daripada kerusi Speaker saya.

[92] Since the stand of the plaintiff, as reflected in his statement of claim, that the assailants were the agents of the defendant but, unfortunately, the plaintiff was unable to identify them, we can only conclude that the plaintiff's claim was frivolous. And since the plaintiff was making an assertion, there must be a solid basis for making such an assertion. It is trite law that an omission in the pleading cannot be rectified by way of an affidavit evidence.

[93] This was not a case where the court is so besotted with the rules that it cannot see the tree from the forest. The rules are made to be obeyed. Pure and simple.

[94] Pleadings should be statements drafted in a summary form and should state only the material facts relied upon and not the evidence by which they are to be proved (*Hadi bin Hassan v Suria Records Sdn Bhd & Ors* [2005] 3 MLJ 522).

[95] And material facts would necessarily include those facts which are necessary for the purpose of formulating a complete cause of action (*Bruce v Odhams Press, Limited* [1936] 1 KB 697). The Federal Court in *Wan Sagar bin Wan Embong v Harun bin Taib & Ors* [2008] 4 MLJ 473; [2009] 1 CLJ 457, aptly said through Zulkefli bin Ahmad Makinudin FCJ:

> We are of the view it is of vital importance that the petition must disclose a cause of action. The pleading must state a concise statement of material facts and the fullest possible particulars.

[96] In a desperate attempt to salvage a sinking ship, the plaintiff relied on the meeting under the tree on 3 March 2009 and claimed that it was an Assembly meeting. It is our judgment that such a contention is wholly unfounded and totally vexatious. It is our judgment that the purported meeting under the tree was not an Assembly meeting because there was no proclamation nor *gazette* notification for such a meeting as is required under the Laws of the Constitution of Perak Darul Ridzuan and the Standing Orders. The defendant, on the other hand, has exhibited all the relevant proclamation and gazette for the Assembly sitting on 7 May 2009 as seen at p 307 (for the proclamation) and at pp 309–310 (for the *gazette*) of the appeal record, *bahagian* 'C' at *Jilid* 4/4.

[97] For the reasons adumbrated above, we unanimously dismissed the appeal with costs of RM20,000. We affirmed the decision of the learned judge of the High Court dated 8 September 2009. Deposit should rightly go to the defendant.

Appeal dismissed with costs.

Reported by Kanesh Sundrum